brough v. *Millard,* 1 Johns. Ch. (N. Y.) 409, 7 Am. Dec. 494. On the question whether creditors holding security should be compelled first to exhaust their security, and then be allowed a dividend on the unpaid balance, the courts are not in harmony. That they should be, see *Wurtz* v. *Hart,* 13 Iowa 515; *American Nat. Bank* v. *Branch,* 57 Kan. 27, 45 Pac. 88; *Amory* v. *Francis,* 16 Mass. 308; *Besley* v. *Lawrence,* 11 Paige 581; *In re Frasch,* 5 Wash. 344. *Contra, Logan* v. *Anderson,* 18 B. Mon. (Ky.) 144; *Third Nat. Bank* v. *Haug,* 82 Mich. 607, 47 N. W. 33; *Jervis* v. *Smith,* 7 Abb. Prac. (N. S.) 217; *Allen* v. *Danielson,* 15 R. I. 480, 8 Atl. 705, overruling *In re Knowles,* 13 R. I. 90. But the equitable rule that a creditor having a lien on two funds must exhaust that one upon which the other creditors have no lien will not be applied where it will work injury to the party having the double lien, *Gorman* v. *Wright,* 136 Fed. Rep. 164, nor where it will injure other parties, *Morrison* v. *Kurtz,* 15 Ill. 193. The rule will not be applied so as to prevent the creditor secured by a mortgage on the homestead, which can be subjected to the payment of debt only by consent of both husband and wife, from releasing his security and proving his claim pari passu with other creditors, *Dickson* v. *Chorn,* 6 Iowa (Cole's ed.) 19, 71 Am. Dec. 382. Where a lien creditor agrees with an assignee to permit the latter to sell real estate without prejudice to the lien creditor's right to prove his debt against either fund, his right to prove it against both funds remains unaffected, *In re Schaffner,* 1 Woodw. Dec. 187. A creditor is entitled to receive a dividend on the full amount of his claim, irrespective of any security he may hold, *People* v. *E. Remington and Sons,* 121 N. Y. 328, 24 N. E. 793. In the distribution of an assigned estate, lien creditors are let in pro rata with general creditors on the personal property, retaining their liens or the realty for the residue, *Appeal of Shunk,* 2 Pa. St. (2 Barr) 304; *In re Schaffner,* supra. In Maryland a creditor who holds collateral for his debt is entitled to participate in the distribution of the insolvent estate only to the amount of his debt remaining due after deducting the value of his collaterals, *Nat. Union Bank* v. *Nat. Mechanics' Bank,* 80 Md. 371, 45 Am. St. Rep. 350.

BONDS—BONA FIDE PURCHASERS—MANDAMUS—REDEMPTION OF BONDS.—A bona fide holder for value before maturity of a coupon bond, payable to bearer, presented the same to the State Treasurer and demanded a certificate of stock in exchange therefor under an act providing for the redemption of certain bonds and stocks of the state. The State Treasurer refused to make the exchange on the ground that said bond had been previously redeemed and surrendered to the State Treasurer, and thereafter had been stolen from the treasury vault by a clerk in the office. No marks to indicate cancellation, as required by statute, had ever been placed upon the bond. Mandamus was sought to compel the State Treasurer to make the exchange. *Held* (POPE, C. J., GARY, A. J., and GARY, KLUGH, PRINCE, and HYDRICK, Circuit Judges, dissenting), that mandamus would lie. *Ehrlich* v. *Jennings, Treasurer* (1907), — S. C. —, 58 S. E. Rep. 922.

When a municipality becomes a party to a negotiable instrument, by authority of law, it is bound by all the rules of commercial law applicable to

such securities. *United States* v. *State Bank,* 96 U. S. 30; *Bank of the United States* v. *The United States,* 2 How. (U. S.) 711; *The United States* v. *Bank of the Metropolis,* 15 Pet. (U. S.) 377; *Cooke* v. *United States,* 91 U. S. 389; *United States* v. *Barker,* 12 Wheat. (U. S.) 559. In *Branch* v. *Commissioners of Sinking Fund,* 80 Va. 427, a case involving a question almost identical with the one in the principal case, it was held, that where negotiable coupon bonds "had been redeemed by the state, and taken into her possession and custody, they ceased to be her obligations, and could not again become such unless she voluntarily redelivered or reissued them. * * * They had no longer any legal inception or existence as bonds of the state, and they were and are as though they never had been; and their vitality could never be restored without voluntary redelivery by the state." This theory, however, is rejected by the court in the case under comment upon the ground that the holder is not claiming by virtue of any reissue of the bond after its redemption, but by virtue of the original issue and relation to it as a bona fide holder unaffected by intervening facts. It is a well settled principle of law that mandamus will lie to compel an officer to perform a plain ministerial duty imposed by law, involving no discretionary power. *State ex rel. Irvine* v. *Brooks,* 14 Wyo. 393; *State* v. *Young,* 38 La. Ann. 923; *Martin* v. *Ingham,* 38 *Kan.* 641; *Middleton* v. *Low,* 30 Cal. 596; *State* v. *Chase,* 5 Ohio St. 528; *Humbolt Co.* v. *County Commissioners of Churchill,* 6 Nev. 30; *People* v. *Attorney General,* 22 Barb. (N. Y.) 114. It would seem, since the state is bound by the rules of law ordinarily applicable to negotiable instruments and the exchange of the bonds was expressly provided for by statute, that the writ was properly issued.

CARRIERS—MAY, AS LESSORS, CONTRACT FOR TOTAL EXEMPTION FROM LIABILITY FOR NEGLIGENCE.—Plaintiff was an employe of a circus company which was being transported in its own cars over defendant's railway; while in a sleeping car, attached to one section of the circus train, he was injured in a rear end collision between that section and the one following. The train was drawn by defendant's engines; it was in charge of defendant's employes and under control of defendant's dispatcher of trains under a contract, to which plaintiff was not a party, by the terms of which this defendant was to hire or lease to the circus company the use of its tracks and motive power and the services of its dispatcher and train crew, all of whom were to be considered as servants of the circus company during the movement of the circus train over defendant's lines; defendant was further to be relieved from all liability for any injury to any person or persons using the train, from any cause whatsoever. *Held,* the relation of carrier and passenger did not exist between plaintiff and defendant, and an action for negligent injury based only on that relation, could not be maintained. *Clough* v. *Grand Trunk Western Railway Co.* (1907), — C. C. A., 6th cir. —, 155 Fed. Rep. 81.

The opinion holds that, by its contract, defendant became a lessor of tracks, motive power and servants to the circus company, which, by these means, itself transported its property and employes over defendant's lines, that defendant was not a common carrier as to circus trains, was under no legal